

OGC Has Reviewed

17 Dec 1975

STATINTL MEMORANDUM FOR: [REDACTED]

SUBJECT : Proposed Contracts with [REDACTED] Inc.

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1. The proposed contracts for hardware and software have been reviewed by this office. For purpose of clarity, each provision will be addressed in the order of appearance. Consistent with this, the following comments are offered for your consideration.

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2. Concerning the software portion, it is noted that [REDACTED] is to be paid to [REDACTED] in accordance with Schedule A. That schedule, however, does not define what is meant by the terms of payment. There is no actual time schedule by which the Credit Union can hold the contractor accountable. Final payment is required upon installation rather than acceptance by the Credit Union. Since the Credit Union is the buyer, it would seem only appropriate that the Credit Union first receive a fully operational system before final payment is made. Acceptance as appears in this contract is a troublesome matter but will be discussed in detail below.

1. Restrictions on Use: Basically, this provision allows the contractor to sell the system to other customers. It is suggested that anything developed subsequently by the Credit Union should be its own property.

2. Reservation of Right to Further Sell or Lease Program: Allows contractor to sell system to others.

3. Trade Secrets, Copyrights and Patents: This clause holds the Credit Union harmless as long as it uses the programs as provided. Reference is made to an enforceable obligation not to reveal trade secrets or other confidential material and information regarding the business of the Licensee (Credit Union), and

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the program supplied by [REDACTED] ... Does this mean [REDACTED] will be required to sign a secrecy agreement? It is unclear what the nature of the enforceable obligation is.

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4. Schedule B is very sketchy. It merely denotes the software program but provides no details. There is no way of determining exactly what the Credit Union is going to get. It would be very difficult, if not impossible, to enforce. Schedule C is not defined. As an example, there is no mention of any documentation to be delivered in reference to the definition of the system parameters, etc. No provision is made for a pre-acceptance test, only for acceptance testing. Testing is completely controlled by the seller rather than by the buyer who will be the user. The provision concerning training of using personnel does not indicate how many classes, duration, or location thereof. It is further noted that Schedule C provides for installation of various components, a post installation review, and full turn key. This might mean that [REDACTED] will turn over a completely debugged and operational system, but the overall language is less than clear.

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5. Note, there is no paragraph 5.

6. Breach of Agreement: Under this clause, no mention is found of the Credit Union's right in case of breach.

3. In regards to the hardware purchase contract, paragraph 2, Delivery, provides FOB manufacturer. The risk of loss passes to the Credit Union. Moreover, delays will extend delivery date. The Credit Union has no recourse in this matter.

3) Shipment: This provision is self-explanatory. Basically, the Credit Union assumes liability for any damage or delay incurred in shipment.

4) Title: The clause provides for vesting of title upon delivery. It is recommended that the Credit Union reserve passing of title to the item until after it has had time to test the system in place.

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5) Taxes: The clause is self-explanatory.

6) Availability of Machines: The date provided is indefinite. There is no provision for liquidated damages should [REDACTED] not make the machines available on the date indicated.

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7) Warranties and Maintenance Terms: Although reference is made to a warranty for a period of time set forth in Schedule A (hardware contract), no such time period is found there. The warranty covers parts (repair or replace) but it does not specify labor to install them. It can be argued installment is implied, but the provision should be more specific. The warranty really excludes most situations to include all implied warranties of merchantability and fitness. Furthermore, the clause eliminates any recourse to damages should the system not work.

8) Acceptance of Machines: Although the acceptance "test" is run at the Credit Union's site, the entire acceptance testing is performed by the contractor. It is recommended that the Credit Union control the acceptance testing since it is the buyer and the user.

9) Software License: What is the relationship to the manufacturer vis a vis the software license? Whose current price list is [REDACTED] referring to?

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10) Field Installation: Self-explanatory

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11) Substitutions or Modifications of Specifications: [REDACTED] reserves entire freedom of substitution and does not require consent of the Credit Union. Substitutions are strictly a unilateral determination to be made by contractor.

12) Miscellaneous: Deviations from these terms and conditions are not valid unless confirmed in writing by [REDACTED]. Note, paragraph 11 allows the contractor to freely substitute and change but not the Credit Union. Any changes it would desire require written consent by [REDACTED]

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[REDACTED]
Office of General Counsel

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SCHEDULE B

PROGRAMS

REPORT PROGRAMS:

Transaction Journal
New and Closed Account Report
Teller Settlement Report
Loan Late Report
Member Trial Balance
Dividend List
Cumis Insurance Reports
Name and Address on Specified Forms
Audit Confirmations
1099 Forms
Member Statements

GENERAL LEDGER PROGRAM

ADMINISTRATIVE TERMINAL PROGRAMS:

Activate Teller terminal and set daily parameters.
Call reports and set variable parameters.
Open new share account and enter new account name/address.
Loan set-up with preparation of documentation and checks.
Open new club account (all types of clubs).
Change name, address and statistical information.
Complete member profile and share, savings, loan or club inquiries.
Enter permanent hold type and amount.
Modify member account detail information.
Compute julian dates.

SCHEDULE B Cont'd.

TELLER TERMINAL PROGRAMS:

Share - Deposit

Share - Check deposit (with corresponding check hold data)

Share - Deposit - Correction

Share - Withdrawal with check printing

Share - Withdrawal - Correction

Loan - Payment

Loan - Payment - Correction

Loan - Principal - Disbursal

Loan - Principal - Disbursal Correction

Loan - Interest - Credit or Debit

Share Inquiries

Loan Inquiries

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